*** THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

\+ WRIT PETITION NOs. 23763 & 24435 of 2003 and 3181 of 2004.

% FRIDAY, THIRTEENTH DAY OF AUGUST, TWO THOUSAND FOUR

\# Dr. Koti John s/o Sri Krupa Rao,

Aged about 44 years, Asst. Professor

(under suspension), Department of IR&PM (HRM),

Andhra University, Visakahapatnam,

R/o Quarter No.3, SS Type A.U. Quarters,

Opp. A.U. High School, Visakhapatnam – 3.

Petitioner

Versus

$ The Vice Chancellor, Andhra University,

Visakhapatnam, and others.

Respondents

! Counsel for the petitioner : Sri M.R.K.Chowdary, Senior Counsel

Assisted by Mr. M.Sudheer Kumar, Advocate

^ Counsel for the respondents : Dr. P.B.Vijaya Kumar,

Standing Counsel for A.U.

< Gist :

>Head Note:

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1. (1994) 3 SCC 357
2. 1996 (72) FLR 294
3. AIR 1956 SC 285
4. (1970) 1 SCC 108
5. (1993) 1 SCC 419
6. (1995) 1 SCC 332
7. (1996) 2 SCC 145
8. (1996) 4 SCC 708
9. (1997) 2 SCC 708

10. (1997) 11 SCC 17

11. 1964 (2) LLJ 139

12. AIR 1971 SC 22

13. (1997) 11 SCC 193

14. AIR 1971 MADRAS 434

15. 2001 (4) LLN 903

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NOs : 23763 of 2003, 24435 of 2003 &

3181 of 2004

(1) W.P.NO. 23763 of 2003:

Between:

Dr. Koti John s/o Sri Krupa Rao,

Aged about 44 years, Asst. Professor

(under suspension), Department of IR&PM (HRM),

Andhra University, Visakahapatnam,

R/o Quarter No.3, SS Type A.U. Quarters,

Opp. A.U. High School, Visakhapatnam – 3.

..... PETITIONER

AND

1. The Vice Chancellor, Andhra University,

Visakhapatnam.

2. Koona Mohana Rao s/o not known,

aged not known, District Judge (Retd.),

and Enquiry Officer, r/o D.No. 7-7-26,

Balejapalli Street, Srikakulam.

3. Andhra University, rep. by its Registrar,

Visakhapatnam.

4. Prof. Y.C. Simhadri s/o not known, aged

about 62 years, Vice Chancellor, Andhra University,

and R/o Dasapall Hills, Visakhapatnam,

5. Prof. G.C.Patro s/o not known, age not known,

Department of PM & IR, Berhampur University,

Berhampur.

6. Dr. Babbivardhan s/o not known, age not known,

Asst. Principal, A.U.College of Arts & Commerce,

Visakhapatnam.

7. A.Shyam s/o Devasahayam, aged 52 years,

Assistant Warden, Arts & Commerce Hostel,

Andhra University, Visakhapatnam.

8. Dr. T. Subbarayudu s/o Sriranganayakulu,

aged 48 years, Associate Professor, IR & PM

Department, Andhra University, Visakhapatnam.

9. Dr. D.B.R.M.K. Benerjee s/o Sanjeeva Rao,

aged 52 years, Head of the Department, IR & PM

Department, Andhra University, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue a writ, order or direction more particularly one in the nature of Mandamus declaring the action of the 1st respondent in appointing the 2nd respondent as Enquiry Officer to conduct enquiry against the petitioner in respect of complaints as communicated in Proceedings Nos. SII(1)2153(1)/03; SII(1)/2153(2); SII(1)/2153(3); SII(1)2153(4); and PA/R/03, dated 19-09-2003 and the consequential charges issued by respondent No.2 as illegal, arbitrary and contrary to the service rules and consequentially to direct the respondent No.2 to refrain from in any way proceeding with the enquiry against the petitioner.

For the Petitioner: Mr. M.R.K.Chowdary, Senior Counsel assisted by Mr. M.Sudheer Kumar, Advocate

For the Respondents Nos. 1,3, 4 : Dr. P.B. Vijaya Kumar, Standing Counsel for A.U.

For the Respondents Nos. 2, 5 to 9: None appeared

(2) W.P.NO. 24435 of 2003:

Between:

Dr. Koti John s/o Sri Krupa Rao,

Aged about 44 years, Asst. Professor

(under suspension), Department of IR&PM (HRM),

Andhra University, Visakahapatnam,

R/o Quarter No.3, SS Type A.U. Quarters,

Opp. A.U. High School, Visakhapatnam – 3.

..... PETITIONER

AND

1. Andhra University rep. by its Registrar,

Visakhapatnam.

2. The Vice Chancellor, Andhra University,

Visakhapatnam.

….. RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Mandamus declaring the action of the respondent No.2 in issuing the impugned proceedings in his proceedings No.S.II(1)/237/2003, dated 20-9-2003 as illegal, void, without power, authority or jurisdiction and consequentially to direct the respondents to refrain from in any way proceeding on the basis of the impugned proceedings.

For the Petitioner: Mr. M.R.K.Chowdary, Senior Counsel assisted by Mr. M.Sudheer Kumar, Advocate

For the Respondents Nos.1 & 2 : Dr. P.B. Vijaya Kumar, Standing Counsel for A.U.

(3) W.P.NO. 3181 of 2004:

Between:

Dr. Koti John s/o Sri Krupa Rao,

Aged about 44 years, Asst. Professor

(under suspension), Department of IR&PM (HRM),

Andhra University, Visakahapatnam,

R/o Quarter No.3, SS Type A.U. Quarters,

Opp. A.U. High School, Visakhapatnam – 3.

..... PETITIONER

AND

1. Andhra University rep. by its Registrar,

Visakhapatnam.

2. The Executive Council, Andhra University,

rep. by its statutory convening authority viz.

the Vice Chancellor, Andhra University,

Visakhapatnam.

3. The Vice Chancellor, Andhra University,

Visakhapatnam.

4. T.Indrajee (retired District Judge),

Enquiry Officer, Andhra University,

Visakhapatnam.

….. RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Mandamus declaring the action of the respondent No.3 in issuing the impugned proceedings in his proceedings No.S.II (Supdt.)/2003, dated 29-1-2004 as illegal, void, without

power, authority or jurisdiction and consequentially to direct the respondents to refrain from in any way proceeding on the basis of the impugned proceedings.

For the Petitioner: Mr. M.R.K.Chowdary, Senior Counsel assisted by Mr. M.Sudheer Kumar, Advocate

For the Respondents Nos.1, 2 & 3 : Dr. P.B. Vijaya Kumar, Standing Counsel for A.U.

For the Respondent No.4: None appeared

The Court Made the Following

::ORDER::

All these writ petitions have been filed by an Assistant Professor (under suspension), in the Department of IR&PM (HRM), Andhra University. Sri M.R.K.Chowdary, learned Senior Counsel appearing for the petitioner and Dr. P.B.Vijaya Kumar, learned Standing Counsel for the Andhra University have submitted that these writ petitions present substantially similar legal aspects and could be considered and disposed of together. The writ petitions are accordingly taken up for disposal by this common order.

Facts in brief :

W.P. No. 23763 of 2003:-

Respondents 5 to 9 submitted complaints dated 13.7.1999, 25.3.2003, 15.3.2003, 22.7.2003 and 29.7.2002 respectively against the petitioner herein. The Vice Chancellor, in respect of each of the complaints, by separate proceedings dated 19.9.2003 appointed the 2nd respondent, a retired District Judge, as an enquiry officer to enquire into the allegations. The 2nd respondent thereupon issued separate charge memos all dated 10.10.2003 calling upon the petitioner to respond to the charges set out therein. At this stage the writ petition is filed for a declaration that the action of the Vice Chancellor in appointing the 2nd respondent a retired District Judge as an enquiry officer to conduct enquiry against the petitioner in respect the five complaints and the five charge memos issued by the

2nd respondent are illegal and contrary to the service rules and for a direction to the 2nd respondent not to proceed with the enquiry pursuant to the charge memos. The writ petition is thus in the nature of a Writ of Prohibition.

The challenge in the writ petition and the relief sought herein is on the basis of the contention that the initiation of the disciplinary proceedings by the Vice Chancellor and the appointment of the 2nd respondent are patently incompetent acts and the 2nd respondent being an outsider is incompetent to conduct disciplinary enquiry against the petitioner who is a teacher of the University.

W.P.No. 24435 of 2003:-

Dr. G.Yohan Babu, an Associate Professor in the Telugu Department and Assistant Principal, Andhra University College of Arts and Commerce, submitted a report on 9.7.2002 complaining about the misconduct by the petitioner on 9.7.2002, stating that confronted with the misbehaviour of the petitioner in the presence of the students, their parents and the university staff during the admission process, the complainant intervened and advised the petitioner not to misbehave, whereupon the petitioner abused and threatened him. On the basis of the complaint the Vice Chancellor of the University by an order dated 14.10.2002 appointed a retired Magistrate as an enquiry officer to conduct the disciplinary enquiry. A charge memo dated 28.10.2002 was issued calling upon the petitioner to explain. The petitioner submitted his explanation dated 1.1.2003. After a due process of enquiry, an enquiry report dated 14.5.2003 was submitted by the enquiry officer. The report recorded the conclusion that the charges framed against the petitioner were proved in the enquiry. The Vice Chancellor having provisionally accepted the conclusions in the enquiry report issued a show cause notice dated 20.9.2003 proposing the punishment of dismissal from service. The writ petition is filed assailing the show cause notice, *inter alia*, on the grounds – (a) that it is only the Executive Council of the University that is empowered to initiate disciplinary proceedings or administer a

penalty on a teacher of the University; (b) that the Vice Chancellor is incompetent either to initiate disciplinary proceedings, to appoint an enquiry officer or to issue the impugned show cause notice and to administer the penalty on a teacher of the University; and (c) that the conclusion as to the guilt of the petitioner in respect of the charges framed against him could be arrived at only after communication of the enquiry report and consideration of the petitioner's objections thereto. In as much as the Vice Chancellor having accepted the findings and recommendation of the enquiry officer has issued the impugned show cause memo communicating the enquiry report along with the final show cause notice, the proceedings are in violation of the principles of natural justice and demonstrate a pre-judgment of the guilt of the petitioner, by the Vice Chancellor.

W.P.No. 3181 of 2004:-

A show cause notice dated 29.1.2004 communicating the enquiry report dated 1.12.2003 and proposing dismissal from the University service, is challenged in this writ petition. The staff members of the Department of IR&PM and Dr. G.V.V.Vijayakumar, an Associate Profession, School of Distance Education of the University, submitted a joint representation dated 18.12.98 complaining that on 17.12.98 the petitioner intruded into the chamber of the Head of the Department of IR&PM and abused Dr. Vijayakumar and the Head of the Department in vulgar and filthy language and when they remonstrated with the petitioner as to such conduct, the petitioner caught hold of the shirt collar of Dr. Vijayakumar and threatened him with dire consequences. Consequent on the complaint, the Vice Chancellor by proceedings dated 24.5.2003 issued a charge memo to the petitioner. By an order dated 3.5.2003 a former District Judge was appointed as the enquiry officer. The petitioner submitted his explanation dated 15.7.2003 to the charge memo dated 25.4.2003. The enquiry officer after a due process of enquiry submitted his report dated 1.12.2003 holding the five charges framed against the

petitioner as having been proved. The Vice Chancellor recorded a provisional conclusion of acceptance of the findings in the enquiry report and issued the impugned show cause notice.

Challenge is asserted on the same grounds as in W.P. Nos. 23763 and 24435 of 2003.

As is apparent the challenge by the petitioner is to the disciplinary proceedings initiated against him. In two of the writ petitions the challenge is at the stage of issue of a second show cause notice and in another at the stage of framing of charges and appointment of an enquiry officer. Number of grounds have been urged by the petitioner to support his challenge to the several stages of the disciplinary proceedings initiated against him. In the considered view of this court, however, it is not appropriate to scrutinise and interfere with the process of disciplinary proceedings at every intermediary stage. The aggrieved officer has always a remedy available to challenge the disciplinary proceedings after the conclusion is arrived at and if a penalty is imposed on him and any appellate remedy therefrom is also availed and results in a conclusion adverse to him. Frequent interference in intermediary stages of disciplinary proceedings results in protraction and undue delay in the conclusion of the disciplinary proceedings and also has the tendency of chilling the confidence and focus of the concerned authorities to process the disciplinary proceedings to various stages and to conclusion. This court therefore does not suppose to deal with all the contentions urged by the petitioner. See in this regard ***Union of India and Others vs Upendra Singh()*** and ***The Managing Director, Madras Metropolitan Water Supply and Sewerage Board and another vs R.Rajan().***

Inter alia the petitioner assails the disciplinary proceedings on the following grounds:-

A. The Vice Chancellor suffers from a patent and inherent incapacity to initiate disciplinary proceedings, appoint an enquiry officer therefor or to issue the show cause notice against the teachers of the University as the power in this regard is granted exclusively to the Executive

Council;

B. A retired judicial officer, who is an outsider to the University, cannot be appointed as an enquiry officer as under the Act and the relevant statutes and ordinances; only a Discipline Committee of the university is competent to conduct the disciplinary enquiry.

As these contentions alone touch upon the very jurisdiction of the Vice Chancellor to initiate disciplinary proceedings, only these contentions are concerned for analysis and adjudication in this judgment.

It is the admitted position that the petitioner is a teacher of the Andhra University and the petitioner and the respondent University are governed by the provisions of the Andhra Pradesh Universities Act 1991 [Act 4 of 1991] (for short 'the Act'), the statutes and the ordinances thereunder.

The Andhra University and the petitioner are governed by the provisions of the Act as u/Sec.4 thereof the Andhra University is deemed to have been established and incorporated under the Act. The Act has come into force w.e.f 2.4.1.1991. All the events relevant to the *lis* presented herein, having occurred after the said date, the contentions considered in this judgment require to be considered under the provisions of the Act.

Relevant provisions of the Andhra Pradesh Universities Act 1991 :-

Section 2 sets out the definitions. Sub-sec (14) defines "prescribed" to mean prescribed by statutes, ordinances or regulations. Sub-sec (23) defines "teachers" of the University to mean teachers appointed by the university to give instructions or guide research in the university and constituent colleges.

Chapter III sets out provisions relating to the officers of the university, the methods of their selection, appointment and their powers and functions. Sec.9(ii) enacts that the Vice Chancellor shall be an officer of the university. Sec.11(iii) specifies that the Vice Chancellor shall be the academic head and the principal executive officer of the

university and shall exercise general control over its affairs and be a whole time officer of the university. According to Sec.13 that the Vice Chancellor, by virtue of his office, shall be a member and Chairman, *inter alia* of the Executive Council; it shall be his duty to ensure that the provisions of the Act, statutes, ordinances and regulations are duly observed; he may exercise all powers necessary for this purpose; he shall give effect to the decision of the authorities of the university taken in accordance with the powers conferred by or under the Act; have such other powers as may be prescribed and when he considers immediate action desirable he may, subject to the general control of the Chancellor, takes such action as may be necessary even with regard to any matter in which any officer or authority may take action, but shall as soon as may be, report the action taken to the officer or authority concerned.

Chapter IV enumerates the authorities of the university including the Executive Council [Sec.17(i)]. The powers of the Executive Council are set out in Sec.19. Sub-sec (5) empowers the Executive Council to appoint teachers of the university subject to such statute as may be prescribed in this behalf. The power to suspend, remove or dismiss teachers of the university subject to such ordinances as may be prescribed in this behalf is conferred on the Executive Council [Sec.19(6)]. Sub-sec 25 of Sec.19 empowers the Executive Council to delegate any of its powers to the Vice Chancellor or to a committee from among its own members or to any employee of the university.

Chapter V of the Act sets out the general provisions. U/Sec.31 all the authorities of the university shall have power to appoint committees. Such committees may, unless there be some special provisions to the contrary, consist all members of the authority concerned and of such other persons, if any, as the authority in each case may think fit. Sec.32 enacts that no act or proceeding of any authority or other body of the university shall be deemed invalid by reason only of some defect in the constitution of the authority; or body or by reason of the existence of a vacancy or vacancies among members.

Chapter IX sets out the power and procedure for making statutes, ordinances and regulations. Sec.51 empowers the Executive Council to make statutes *inter alia* in respect of powers, duties and conditions of service of the officers of the university. Sec. 53 enables the Executive Council to make ordinances subject to the provisions of the Act and statutes, *inter alia* in respect of matters which by the Act or by the statute may be provided for by ordinance.

In addition to the relevant provisions of the Act which have been referred to above, there are three other compilations to the contents of which a reference has been made by the counsel for the respective parties. These are – (1) The University Code ('the Code'), (2) The Administration Manual ('the Manual') and (3) The Standing Orders of the Executive Council ('the Standing Orders').

The University Code:

The Code is a compendium of the provisions of the Act, the statutes, ordinances, regulations and rules governing various facets of the administration of the University. Essentially the Code appears to be a compilation of the various statutory and other instruments referred to above, classified into various topical heads to provide easy reference and guidance for the administration of the university. Chapter XXIX of the Code is a compilation of the provisions of the Act, the statutes and ordinances dealing with University Professors, Readers, Lecturers and other teaching posts. Paragraph-8 of this Chapter of the Code states that on sufficient cause shown and after due investigation it shall be competent for the Executive Council to suspend any teacher of the university from office and from emoluments thereof either in whole or in part for a period not exceeding one year or to require him to retire and that the Vice Chancellor may, when he considers the presence of an employee even for a short period undesirable, he may order his suspension and place the matter before the Executive Council at its next meeting. Paragraph-9 lays down that the Executive Council may at any time dispense with the service of a teacher without notice in the event of

misconduct on his part or a breach by him of one or more terms of the contract into which he has entered with the university, which in the opinion of the Executive Council makes him unfit to hold the post. Paragraph-10 empowers the Executive Council to terminate the services of a teacher under paragraph-9. Before taking such action the Executive Council shall constitute a committee in accordance with the conditions of the contract executed by the teacher concerned and the teacher shall be given the opportunity of a full hearing before the committee and no action shall be taken against the teacher except on the recommendations of the committee and on its approval by the Executive Council.

It would appear that the Syndicate (now redesignated as the Executive Council) of the university by a resolution dated 19.1.1946 and 22.3.1946 had adopted the Administration Manual as a result of which the earlier paragraphs 8 and 9 were substituted by the current paragraphs 8 to 12, in the Code.

The Administration Manual:

The Manual came into force on and from 1.4.1946. It is a compendium of the various rules governing the employees of the university in areas including the general conditions of service, conduct and disciplinary matters, pay, D.A., PF, Gratuity and other such aspects. Chapter- XII of the Manual contains the Penalty and Appeals Rules. Rule-1 specifies the major and minor penalties which may for good and sufficient reasons be imposed upon the employees of the university. Rule 3(a) specifies that the authority which may impose any of the penalties set out in Rule-1, is the authority in whom the power of appointment of the employee vests. Rule-5 sets out the procedure to be followed for imposition of the minor penalties specified in sub-rules (i), (ii) and (v) of Rule-1. Rule-6(a) specifies that enquiry relating to any disciplinary action may be made by the Vice

Chancellor or the Discipline Committee of the Executive Council as circumstances require, or by such other officer or special committee appointed for the purpose. There is also a proviso which is to the effect that in cases of lapses in which the Registrar or any other officer of the University or the Head of a Department or office is directly or indirectly responsible, the Vice Chancellor shall appoint a committee to hold an enquiry and fix liability. Rule 6(b) sets out the procedure to be followed for imposition of the major penalties of dismissal, removal, compulsory retirement or reduction otherwise than when based on facts which have led to an employee's conviction in a criminal case.

The Standing Orders of the Executive Council:

The Standing Orders are working instructions for the use of the members of the Executive Council and the university office culled out from the provisions of the Act, the statutes, the ordinances, the regulations and the rules.

Chapter-II of the Standing Orders sets out instructions regarding the work, meeting and minutes of the Executive Council. Paragraph-3 herein specifies that the committees as constituted u/Sec.19(25) of the Act shall exercise such powers as are delegated herein and may be delegated to them by the Executive Council from time to time. The Discipline Committee is one such enumerated committee. Paragraph-8 specifies that as far as possible every member of the Executive Council should find a place in one or other committee and that no one shall ordinarily be a member of more than three committees at the same time. Paragraph-14 dealing with the Discipline Committee states that in cases of misconduct of the teachers of the university and breach of conditions of the agreement, it will conduct an enquiry in accordance with the terms of the agreement executed by them and make its recommendations to the Executive Council.

It requires to be noticed that the provisions contained in the Code, the Manual and the Standing Orders are compilations of the relevant provisions of the Act, statutes, ordinances, regulations or rules of the

university and other detailed instructions for implementation of the above instruments. The obligation of an officer or authority of the University to confirm to a particular course of substantive or procedural conduct is referable to the relevant provisions of the Act, the statutes, the ordinances, the regulations or the rules, as the case may be.

The case of the petitioner, as has already been noticed, is that the Vice Chancellor is patently incompetent to initiate disciplinary proceedings against him. This contention is premised on the assumption that it is the Executive Council which is the exclusive authority of the university empowered to appoint as well as to suspend, remove or dismiss teachers of the university and not the Vice Chancellor and that the power to initiate disciplinary enquiry being an integral component of the power to remove or dismiss a teacher, is vouchsafed exclusively to the Executive Council and not to the Vice Chancellor.

Responding to the above contention, the university has pleaded that the Executive Council at its meeting held on 21.11.2003 delegated its powers under sub-sections (5)(iii), (6), (7) and (8) of Sec.19 of the Act to the Vice Chancellor, the principal executive officer of the university who has general control over all its affairs, for the purpose of maintaining campus discipline. By this resolution the Executive Council has also ratified the issuance of final show cause notice by the Vice Chancellor in disciplinary matters.

This resolution of the Executive Council has been passed in exercise of the powers available to it under sub-sections (25), (26) and (40) of Sec.19 of the Act. Sub-sec (6) of Sec.19 of the Act deals with the power of the Executive Council to suspend, remove or dismiss teachers of the university, subject to such ordinances as may be made in this behalf. This power of the Executive Council has been delegated to the Vice Chancellor by the resolution of the Executive Council dated 21.11.2003. Such delegation is eminently within the domain of the Executive Council in view of the provisions of

Sec.19(25) of the Act. Sub-sections (26) and (40) of Sec. 19 of the Act deal with the powers of the Executive Council – (a) to regulate and determine all matters concerning the administration of the university in accordance with the statues, ordinances and the regulations and to exercise such powers or duties as may be conferred or imposed by the Act and (b) to exercise all powers of the university not otherwise provided for and all powers requisite to give effect to the provisions of the Act, respectively. The powers of the Executive Council under sub-sections (26) and (40) of Sec.19 of the Act have also been delegated to the Vice Chancellor by the Executive Council's resolution dated 21.11.2003. Further *apropos* Sec.13(8)(a) of the Act, the Vice Chancellor is consecrated with adequate power to take appropriate and necessary action with regard any matter in which any officer or authority of the university may take action, subject to an obligation to report the action taken to the officer or authority concerned.

As a result of the emergency powers of the Vice Chancellor u/Sec. 13(8)(a) as well as the delegation to him by the Executive Council's resolution dated 21.11.2003, the Vice Chancellor is eminently competent to initiate disciplinary proceedings against the petitioner, a teacher of the university. In view of the delegation the Vice Chancellor steps into the shoes of and exercises the power of the Executive Council, to suspend, remove or dismiss teachers of the university. The initiation, by the Vice Chancellor, of disciplinary proceedings against the petitioner or the issuance to him of show cause notices proposing the penalty of dismissal from the service of the university, is thus clearly competent and suffers from no infirmity, warranting interdiction by this court.

Another contention urged by the petitioner is that the Discipline Committee of the Executive Council alone is competent to conduct a disciplinary enquiry against a teacher of the university and not a retired Judicial Officer. This contention is urged on the premise that it is only the Discipline Committee of the university (constituted under Sec.31 and required to be constituted u/Rule 13 of the Penalties and

Appeals Rules (Chapter XII of the Administration Manual) r/w paragraphs 3,8 and 14 in Chapter II of the Standing Orders), which is authorised to conduct an enquiry into allegations of misconduct by teachers of the University. According to the petitioner, Sec.31 obligates the Executive Council to appoint committees and the committees so appointed should consist of members of the Executive Council apart from other persons if any as the Executive Council may think fit. Rule 6 of the Penalties and Appeals Rules also mandates that it is the Discipline Committee of the Executive Council that should conduct an enquiry relating to any disciplinary action. Paragraph-3 of Chapter-II of the Standing Orders of the Executive Council makes it mandatory for a Discipline Committee to be constituted; Paragraph-8 requires the Discipline Committee to be composed of a member or members of the Executive Council and as per Paragraph-14 of the Standing Orders it is exclusively the Discipline Committee which is empowered to enquire into the misconduct of the teachers of the university. The enquiry against the petitioner conducted by a retired Judicial officer is therefore incompetent as he is not the Discipline Committee of the Executive Council, is the substance of the petitioner's challenge.

Sec.31 of the Act is an enabling provision. It reads as under:-

> "31. All the Authorities of the University shall have power to appoint Committees. Such Committees, may unless there be some special provision to the contrary, consist of members of the authority concerned and of such other persons, if any, as the authority in each case may think fit."

On a true and fair construction of the provisions of Sec.31 it is clear that the Executive Council as an authority of the university is empowered to appoint a committee. It is not mandatory that a committee should be appointed. It is left to the discretion of the Executive Council. Where it does appoint a committee however, such committee should consist of a member or members of the Executive Council. Rule 6(a) of the Penalties and Appeals Rules (Chapter XII of the Administration Manual) reads as under:

"6. (a) Enquiry relating to any disciplinary action may be made by the Vice Chancellor or the Discipline Committee of the Executive Council as circumstances require, or by such other officer or special committee appointed for the purpose, … ".

It is clear from the above rule that it is either the Vice Chancellor or the Discipline Committee of the Executive Council or such other officer or special committee appointed for the purpose who shall be competent to conduct disciplinary enquiry. This rule is required to be construed in harmony with the provisions of the Act. Under the Act it is the Executive Council which is competent to exercise the power of suspension, dismissal or removal in respect of teachers of the university. Where the Executive Council in exercise of the powers u/Sec.31 has constituted a Discipline Committee, it is the Discipline Committee which is alone empowered to conduct an enquiry relating to the misconduct of the teachers of the university. As Sec.31 is an enabling provision it is not obligatory on the Executive Council to appoint a Discipline Committee. In the absence of a Discipline Committee having been constituted by the Executive Council, it cannot be inferred that no disciplinary enquiry at all would be conducted against a teacher of the university alleged to have committed misconduct. Such an interpretation would lead to disastrous consequences.

There is nothing in the provisions of the Act, the Code, the Manual or the Standing Orders, which disables the Executive Council to exercise the disciplinary power available to it u/Sec.19(6) of the Act. As the disciplinary power of the Executive Council has been legitimately delegated to the Vice Chancellor by the Executive Council by the resolution dated 21.11.2003, the Vice Chancellor is competent to conduct a disciplinary enquiry himself or to appoint an enquiry officer or a special committee appointed for the purpose. This is what Rule-6 of the Penalties and Appeals Rules means. Paragraph-3 of the Standing Orders also throws a light on the status of the committee including the Discipline Committee, which may be

constituted by the Executive Council. Paragraph-3 states that the following committees as constituted u/Sec.19(25) of the Act shall exercise such powers as are delegated hereunder and may be delegated to them by the Executive Council from time to time (*emphasis*) . The Discipline Committee is one of the enumerated committees which may be constituted u/Sec.19(25) of the Act. Sec.19(25) of the Act, as has already been noticed, is a provision which enables the Executive Council to delegate any of its powers to the Vice Chancellor or to a committee from among its own members or any employee of the university. If the Executive Council has chosen not to delegate its powers to a Discipline Committee by constituting such a Committee, under Para-3 of the Standing Orders, there is nothing in the provisions of the Act or in any other statutory instrument, which can be said to have been transgressed. An enabling power is not an obligating power. Instead of constituting a Discipline Committee and delegating its disciplinary powers u/Sec.19(6) of the Act to such a committee, the Executive Council has considered it appropriate, by its resolution dated 21.11.2003 to delegate its disciplinary power to the Vice Chancellor. Such delegation is consistent with the provisions of sub-sections (25), (26) and (40) of Sec. 19 of the Act. On an interactive analysis of the provisions of the Act, the Code, the Administration Manual and the Standing Orders of the Executive Council, the contention of the petitioner that it is exclusively the Discipline Committee of the Executive Council which is empowered to initiate disciplinary enquiry against a teacher of the university, is misconceived and does not commend acceptance by this court. This contention is accordingly rejected.

Another contention of the petitioner is that a retired Judicial Officer, being an outsider to the service of the University, is incompetent to conduct an enquiry.

Rule 6(a) of the Penalties and Appeals Rules (Chapter XII of the Administration Manual) specifies that enquiry relating to any disciplinary action should be made by the Vice Chancellor or by such

other officer or special committee appointed for the purpose. The expression “Special Committee appointed for the purpose” is plenitudinous enough to comprehend a single person committee. At any rate the language of the Rule 6(a) does not in terms prohibit the appointment of a person not in the employment of the university, to be an enquiry officer in a disciplinary proceedings.

Whether the Vice Chancellor as a disciplinary authority vide the delegation of the disciplinary powers by the Executive Council by its resolution dated 21.11.2003, is competent to appoint an enquiry officer to conduct the disciplinary enquiry or is obligated to himself conduct the disciplinary enquiry or is incompetent, on empirical principles, to appoint an outsider to the institution as an enquiry officer, requires to be considered.

In ***Pradyut Kumar Bose vs The Hon’ble Chief Justice of Calcutta High Court()***, a Constitution Bench of the Supreme Court was called upon to consider the question whether the dismissal of the Registrar of the High Court, by the order of the Chief Justice pursuant to an enquiry conducted by another learned Judge of the High Court deputed for the purpose by the Chief Justice, was competent. The Registrar was appointed to the post by the Chief Justice. His dismissal was also by an order of the Chief Justice dated 3.9.1951. Earlier a learned Judge of the High Court was deputed by the order of the Chief Justice dated 28.5.1951 to inquire into and submit a report on the conduct of the Registrar. The learned Judge submitted his report dated 11.8.1951 finding the officer guilty in respect of some of the charges. Thereupon the Chief Justice after according a hearing to the officer, passed the impugned order of dismissal. It was contended *inter alia* on behalf of the officer that even if the Chief Justice had the power to dismiss, he was not, in exercise of that power, competent to delegate to another Judge the power to inquire into the charges, but should have conducted the inquiry himself. The Supreme Court held that the exercise of power to appoint or dismiss an officer is an exercise not of judicial power but of an administrative power despite the fact that an opportunity to show cause and an enquiry simulating judicial

standards had to precede the exercise of disciplinary power. The Supreme Court clearly reiterated the principle that a statutory functionary exercising such a power cannot be said to have delegated his function merely by deputing a responsible and competent officer to inquire and report. The Supreme Court held that this is the ordinary mode of exercise of administrative power. What cannot be delegated except where the law specifically provided – is the ultimate responsibility for the exercise of such power, held the Supreme Court. The contention of the Registrar of the Calcutta High Court was accordingly negatived by the Supreme Court.

In ***State of M.P. and others vs Shardul Singh()*** a Sub Inspector of M.P. Police was dismissed by the I.G. of Police on the basis of a report of enquiry submitted by the Superintendent of Police. The Superintendent of Police conducted the enquiry on the basis of the applicable regulations. The dismissal was eventually and successfully challenged before the M.P. High Court on the ground that the Superintendent of Police was not competent to initiate or conduct the enquiry, as the charged officer had been appointed by the I.G. of Police. On appeal the Supreme Court reversed the judgment of the High Court. Relying on its earlier judgment in *Pradyutkumar Bose* (3 supra), the Supreme Court concluded that as the order of dismissal was passed by the I.G. of Police who had appointed the charged officer, the requirements of Art. 311 of the Constitution had been satisfied. As the relevant service regulations empower the enquiry to be conducted by the Superintendent of Police, the Supreme Court held, the dismissal of the S.I. by the I.G. of Police based on an enquiry report submitted by the Superintendent of Police suffers from no infirmity or infraction of Art. 311 of the Constitution, warranting its invalidation.

In ***P.V.Srinivasa Sastry and others vs Comptroller & Auditor General and others()***, the Clerks in the Accountant General's office were subjected to departmental proceedings on the allegation of illegal drawal of LTC. Disciplinary proceedings were initiated by a Senior Deputy Accountant General instead of the Accountant General, who was the

appointing authority. Pursuant to the enquiry a penalty of reduction in rank was imposed. *Inter alia* the challenge to the disciplinary proceedings was that as the proceedings were initiated by an officer other than the appointing authority, the entire proceedings was violative of Art311 of the Constitution. Following its earlier judgments i n *Shardul Singh* (4 supra) the Supreme Court held that as the authority to initiate the disciplinary proceedings was competent to do so under the relevant service rules, the departmental proceedings were competent and no violation of the provisions of Art.311 was made out. Art.311 does not ordain that only the disciplinary authority should initiate the disciplinary proceedings, held the Supreme Court.

I n ***Transport Commissioner, Madras vs A.Radha Krishna Moorthy()*** the Supreme Court held –

> "8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal"

The same principle was reiterated in ***Inspector General of Police and another vs Thavasiappan().*** The Supreme Court emphasised that generally speaking it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted only by such authority.

In ***Director General, ESI and another vs T.Abdul Razak()***, Regulations 12(2) and 13(1) of the ESI Corporation (Staff and Conditions of Service) Regulations 1959 were challenged as suffering from the vice of sub-delegation. The impugned Regulations conferred power on the Director General to specify by a general or special order an authority which could also act as disciplinary authority or could also institute disciplinary proceedings. Negativing the challenge and relying on its earlier decisions referred to supra, the Supreme Court opined that the

legal position is well settled that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and further held that the proceedings could be initiated by any superior authority who can be held to be controlling authority including officers subordinate to the appointing authority. As the Regional Director was the officer in charge of the region and was the controlling authority insofar as the charged employees were concerned, he could institute the disciplinary proceedings even in the absence of a specific conferment of power in that regard, ruled the Supreme Court.

The same view was reiterated by the Supreme Court in ***Government of Tamil Nadu and others vs S.Velraj()*** while considering the provisions of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955.

In ***Steel Authority of India and another vs Dr. R.K. Diwakar and others()***, the Director, Medical and Health Services in the SAIL issued the charge sheet in the context of the Managing Director being the disciplinary and appointing authority. The Director was however the controlling authority and the power to initiate disciplinary proceedings was conferred on him. The Supreme Court while allowing the appeal of the employer reiterated the principles already adverted to in its earlier judgments.

Another contention of the petitioner is that as the enquiry officer, a retired District Judge, is not an officer of the University and is an outsider, he is incompetent to hold an enquiry.

In ***Saran Motors Pvt. Ltd., New Delhi vs Vishwanath and another()*** an enquiry held by a person employed as a lawyer of the employer and paid remuneration for holding the enquiry, was challenged. The Supreme Court held - *"it is well known that enquiries of this type are generally conducted by officers of the employer and in the absence of any special or individual bias attributable to a particular officer it has never been held that the enquiry is bad just because it is conducted by an officer of the employer. If that be so it is obviously unsound to take*

the view that a lawyer who is not a paid officer of the employer, is incompetent to hold an enquiry, because he is an employer and is paid remuneration for holding the enquiry."

Again in ***M/s Dalmia Dadri Cement Ltd., vs Murali Lal Bikaneria()*** the Supreme Court repelled the contention that the enquiry officer being a junior Advocate and at times appearing on behalf of the management was disqualified on account of bias, for being an enquiry officer. The principle enunciated by the Supreme Court in Saran Motors (9 supra) was reiterated.

In ***Indian Telephone Industries Ltd., vs Devi Shankar Kumar Shukla()*** the Standing Orders provided for appointment of a person other than from the security department as an enquiry officer. The Supreme Court held that such a provision does not prohibit the appointment of an outsider as an enquiry officer. The Supreme Court held that such a provision (in the Standing Orders) can not be construed to mean that a person who is not even an employee in any other department and being an outsider having no interest in the outcome of the domestic inquiry is also to be excluded.

A learned single Judge of the Madras High Court in ***The Management of Sri Sivasakthi Bus Service vs P. Gopal and another()*** reiterated the well settled position that the employer can appoint an independent person not necessarily one who is inside the management's activity to hold an enquiry.

Another single Judge of the Madras High Court in ***P.M.Raju vs Presiding Officer, Labour Court, Madurai and The Management of Fenner (India) Ltd., Madurai(),*** reiterated the same principle and ruled that except where there is a provision for appointment of an enquiry officer only from among the employees of the management, in the Standing Order, appointment of an outsider as an enquiry officer would not vitiate the proceedings.

None of the contentions urged on behalf of the petitioner, warrant interference. The Vice Chancellor of the Andhra University is

competent to initiate disciplinary proceedings against the petitioner, to appoint a retired Judicial Officer as an enquiry officer, to issue a charge memo and show cause notices. The appointment of a retired Judicial Officer as an enquiry officer is neither *per se* invalid nor does such appointment or conduct of disciplinary proceedings violate any of the provisions of the Act, the Code, the Administration Manual or the Standing Orders of the Executive Council.

As further process of the disciplinary proceedings against the petitioner had been stayed by this court in these writ petitions, this court considers it appropriate to direct the respondents to conclude the disciplinary proceedings with utmost expedition.

The writ petitions are misconceived and are accordingly dismissed. No order as to costs.

Date: /08/2004 ----------

Justice G. RAGHURAM

LR COPY TO BE MARKED: **YES**

(B/O)

Pvsn

One fair copy to the Hon'ble Sri Justice Goda Raghuram (for His Lordship's kind perusal)

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13. Dr. D.B.R.M.K. Benerjee s/o Sanjeeva Rao,

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